IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/04/2004

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The Honourable Mr. Justice K.P. SIVASUBRAMANIAM

Writ Petition No.3923 of 1997

All India Overseas Bank
Employees' Union,
rep., by its
General Secretary,
764, Anna Salai,
Madras - 600 002. .. Petitioner

-Vs-

1. Indian Overseas Bank,
rep. by its Chairman
and Managing Director,
763, Anna Salai,
Madras - 600 002.
2. The Presiding Officer,
Industrial Tribunal,
High Court Buildings,
Madras - 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issue of a Writ of Certiorarified Mandamus as stated therein.

For petitioner: Mr. C.R. Chandrasekaran

For respondents: Mr. S. Kanniah for R1

:ORDER
The petitioner is the All India Overseas Bank Employees'
Association seeking for a Writ of Certiorarified Mandamus to quash the award dated 29.3.1996 of the second respondent/Industrial Tribunal in I.D.No.81/93 and to direct the first respondent to pay subsistence allowance to the workmen under suspension as they had been paying earlier to 2 1.1.1988.

2. The union raised a dispute in 1991 in respect of
entitlement to usual increment during the period of suspension of its members. The dispute arose as a result of the bank stopping the grant of increments to the workmen under suspension.

3. According to the petitioner/Union, they are entitled to
increments in terms of para 557 of the Sastri Award and as endorsed in para 1

7.14 of the Desai Award and the Bipartite Settlement dated 8.9.1993 entered into between the Management and the National Confederation of Bank Employees to which the petitioner/Union is affiliated.

4. The following issue was raised for adjudication before the Tribunal:
Whether the action of the Management/the Indian Overseas Bank in discontinuing the practice of including increments for the purpose of calculating the subsistence allowance during suspension period in respect of their workmen is justified? If not, to what relief they are entitled?

5. Earlier, the petitioner/Union had filed a Writ Petition No.3080 of 1998 challenging the Circular dated 21.1.1988 depriving the benefits to the employees. The said Writ Petition was withdrawn on the legal advice on the ground that an industrial dispute has been raised. Hence, the said Writ Petition was dismissed as withdrawn. The petitioner/Union contends that in terms of the provisions as aforesaid in Sastri Award and Desai Award and the consequent Bipartite Settlement, it was clear that the workmen were entitled to be paid a particular percentage of pay and allowances during the period of suspension as subsistence allowance. The petitioner/Union contends that the provisions are unambiguous. It is also submitted that even otherwise, the long practice of the employer was to give credit to the increments falling due even during the period of suspension and it has acquired a long established practice.
6. However, the Labour Court on an erroneous assumption had denied the benefits and hence the above Writ Petition.

7. In the counter filed by the bank, it is stated that the bank received a guideline from the Indian Banks' Association (IBA) to the effect that the banks have to reckon increments which accrue during the period of suspension for the calculation of subsistence allowance keeping in view the provisions of the Awards/Bipartite Settlements. On the basis of the said decision of IBA, a circular was issued on 4.4.1998 whereunder operational instructions were given to all the branches to reckon annual increments during the period of suspension. It was also clearly stated that the above decision will operate prospectively in respect of the staff who were under suspension as on the date of the circular dated 17.2.1998.

8. It is further stated that the bank was guided earlier by a letter of IBA dated 5.2.1987 whereunder the bank was advised that if the normal date of annual increment of a suspended employee falls during the period of his suspension, then the annual increment should be reckoned for the purpose of calculation of subsistence allowance from that date. However, as stated earlier, the said circular has been modified from 17.2.1998 and hence the Writ Petition has become infructuous. It is further stated that the policy implemented during the impugned period was justified considering that an employee under suspension cannot be treated to be in service. It was a policy decision and hence, cannot be assailed in a dispute. The Industrial Tribunal, therefore, came to the correct conclusion that the employees cannot seek benefit of increments during the period of suspension as a matter of right.

9. Learned counsel for the petitioner, after referring to the relevant provisions in Sastri Award, Desai Award and Bipartite Settlement, contends that the rights of parties were governed by such awards and settlement and that it is not open to the Management to contend that a person under suspension is deemed to be not in service, and hence not entitled to increments. Learned counsel further refers to the judgment of a Division Bench of Madhya Pradesh High Court in Madhav Anant Rao Gore and State Bank of India, Bhopal and others [1986 (II) LLJ 394]. In that case also, the effect of and interpretation of Clause 17 of Desai Award arose for consideration. The Division Bench held that the employee under suspension was entitled to increments and allowances after one year in terms of Clause 17 of Desai Award. The said judgment was directly applicable to the issue on hand. The learned counsel also refers to the counter affidavit filed in W.P. No.11799 of 1991 filed by the IBA and another. In that case also, the same issue arose for consideration. In Paragraph 8 of the counter, after extracting the provisions under the Sastri Award, the respondent had stated as follows:
"In fact the workmen/employees who are placed under suspension would be entitled for calculation of subsistence allowance reckoning the increments that would fall during the period of suspension".

10. The learned counsel for the petitioner further contends that the agreements/settlements envisaged a clear and executable right in favour of the employees and hence the Industrial Tribunal was in error in holding that the annual increment during the period of suspension cannot be reckoned for calculating subsistence allowance.

11. The learned counsel for the first respondent contends that even though from the year 1998 the bank has taken a policy decision to take into account increments also during the period of suspension for calculation of subsistence allowance, it was a matter of policy decision and the employees cannot claim it as a matter of right for the period when the policy was not in favour of reckoning increments during the period of suspension.

12. Learned counsel for the first respondent would further submit that the effect of suspension of an employee was to place him out of service and increment was co-extensive with the actual performance of his duties and therefore, when he has not performed his duties, he cannot claim it as a matter of right that increments should be taken into account for calculation of subsistence allowance.

13. Learned counsel for the first respondent relies on the judgment of a Division Bench of Rajasthan High Court in Rajasthan State Electricity Board, Jaipur and another v. Narayan Lal Meena (1995 LAB. I.C. 864). The Division Bench considered as to whether the employee during the period of suspension can seek the benefit of increments during the period of suspension and held against the claim of the employee.

14. Reference is made to the judgment of a Division Bench of this Court in A. Raghavan vs. Tamil Nadu Civil Supplies Corporation Ltd., (represented by its Senior Regional Manager), Tiruvannamalai (1995 □ II L.L.N.

1084). The issue which arose for consideration in that case was whether during the period of suspension the suspended employee would be entitled to revised scale of pay as recommended by the Pay Commission? Though the Division Bench held that the employee under suspension was entitled to increased subsistence allowance in terms of the revised pay scales recommended by the Pay Commission, it was held that he was not entitled to annual increments during the period of suspension.

15. Reliance is also placed on the judgment of Supreme Court in Dena Bank vs. Kiritikumar T. Patel [1997 (III) CTC 110) on the observation relating to the interpretation of the expression 'Full Wages Last Drawn' as occurring in Section 17-B of the Industrial Disputes Act, 1 947. The issue which arose for consideration was whether in terms of Section 17-B, the employer will have to pay to the employee during the period pending the Writ Petition, the wages in terms of last drawn pay or which would have been drawn if he was not suspended. The Supreme Court interpreted the expression "Full Wages Last Drawn" as meaning that maintenance allowance which is admissible under any rule to be paid irrespective of the amount which was actually being paid as maintenance allowance to the workman and that with regard to the wages, it can only mean that wages which were actually paid and not the amount that would be payable and required to be paid. No direction can be given for payment of wages which would have been drawn by the employee if he had been reinstated and not the full wages last drawn by him.

16. I have considered the submissions of both sides.

17. The endeavour on the part of the learned counsel for the first respondent to contend that as the suspended employee was not in service, he has no right to insist for including increment for calculating subsistence allowance for the period during which he was kept under suspension can be no doubt accepted under normal circumstances. But, in this case, the parties are admittedly governed by a series of Awards or Settlements as well as by Bipartite Settlement. The following is the paragraph 557 of Sastri Award as endorsed in para 17.14 of Desai Award and partially amended by the Bipartite Settlement dated 8.9 .1993:

I) Para 557 of Sastri Award and para 17.14 of Desai Award.

"1) For the first three months one-third of the pay and allowance which the workmen would have got but for the suspension.

2) Thereafter where the enquiry is departmental by the Bank, onehalf of the pay and allowances for the succeeding months. Where the enquiry is by an outside agency, one-third of the pay allowances for the next three months and thereafter one-half for the succeeding months until the enquiry is over".

(II) Partial amendment by para 5 of the Bipartite Settlement dated 8.9.1993:

Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI), Subsistence Allowance Will be payable at the following rates:

1) For the first three months 1/3 of the pay and allowances which the workmen would have got but for the suspension.

2) Thereafter 1/2 of the pay and allowances.

3) After one year, full pay and allowances if the enquiry is not

delayed for reasons attributable to the concerned workman or any of his representatives. Where the investigation is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after 6 months from the date of receipt of report of such agency, or one year after suspension, whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representatives".

18. A perusal of the above terms disclose that the employee will be paid a particular percentage of pay and allowances which he would have otherwise received but for the suspension, during the period of suspension. It is also made clear that subsistence allowance will be calculated by taking into account the increments which also fall due during the period of suspension. There is no dispute over the interpretation of the Award and Bipartite Settlement. That being so, reference to the general law of service that during the period of suspension, the employee is not performing any duties and therefore, he cannot claim any right to increment cannot etc., would be irrelevant where the parties are admittedly governed by specific Awards and Settlements. It is only as a result of realising the limitations, subsequently, the respondent had issued a circular on 4.4.1998 whereunder the following operational instructions have been issued:

"1. If the normal date of annual increments of a suspended award staff member falls during the period of his/her suspension, the increments which fall due during the period of suspension are to be reckoned for calculation of subsistence allowance to award staff keeping in view the specific provisions of Awards/Bipartite Settlements.

2. The decision to reckon the increments that fall during the period of suspension for the purpose of computation of Subsistence Allowance shall have only prospective effect i.e. it will apply in respect of award staff who are under suspension as on the date of IBA Circular i.e. 17.2.1998.

3. The subsistence allowance to such of those award staff who are under suspension as on 17.2.1998 are to be arrived at by notionally reckoning the annual graded increments, which fall due since their suspension and payments made prospectively i.e. from 17.2.1998. Branches may calculate the arrears that become payable on account of revised subsistence allowance from 17.2.98 and pay the same to such of those employees who are under suspension as on 17.2.98.

4. The above operational instructions in respect of calculation of subsistence allowance payable during the period of suspension only. The question of actual release of increments that have fallen due during the period of suspension will be decided by the Disciplinary Authority at the time of passing original orders of punishments both in respect of officers and award staff.

5. In case of officers, the annual graded increments are not to be taken into account while computing and paying Subsistence Allowance in view of the Regulation 14 of IOB Officer Employees Discipline & Approval Regulations, 1976.

6. If Disciplinary Authority decides not to release the increment that has fallen during the period of suspension, the award staff/ officer would not be entitled to the same notwithstanding the fact that award staff had drawn subsistence allowance based on increments that have fallen during

the period of suspension, and such increment will not become part of pay on revocation of suspension.
7. Branches and Regional Offices are advised to be guided by the above instructions. Regional Office may see that this Circular is brought to the notice of all the Disciplinary Authorities attached to their office for necessary compliance.
All other instructions given in Permanent Circular Ref.No.192/88 dt.21.1.98 remain unchanged."

19. Valuable rights of parties cannot be made to depend upon any policy declarations at the choice of the respondents. They have to be governed either by the general service law or by terms of Settlements/Agreements between the parties or awards which would bind the parties. It cannot be left to the unilateral decision of the Management to interpret the provision in a particular manner for a particular period and in different manner for a different period. Rights of parties have to be governed by strict legal interpretation of the regulations or the binding terms of agreements or awards.
20. Therefore, the fact that in terms of Sastri Award, Desai Award and Bipartite Settlement, the employees are entitled to the calculation of increments during the period of suspension not being disputed, the petitioner/Union is entitled to succeed and entitled to the consequential benefits till the period from which date when the instructions dated 4.4.1998 came into operation and the employees placed in suspension prior to the said period will be entitled to the interpretation as above.
21. With the result, the Writ Petition is allowed. No costs.

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Internet: yes

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